

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 166 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KHEDUT SAHAKARI KHAND UDYOG MANDALI LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 20/07/98

ORAL JUDGEMENT (Per C.K.Thakker, J)

The following question was referred to us by the
Tribunal for our consideration :

"Whether, on the facts and in the circumstances
of the case, the Appellate Tribunal was right in
its conclusion that the C.I.T. Baroda was right

in passing the order u/s. 263 of the I.T. Act, 1961, directing the I.T.O. to disallow deduction of Rs.29,17,912/- u/s. 80-T of the Act?"

2. The assessee, a co-operative society, running a Sugar Factory had claimed deduction of Rs.29,17,912/u/s. 80-T from the long term capital gains of Rs.72,87,280/on sale of Machineries, which was allowed by the Income-Tax Officer. The Commissioner of Income-tax Baroda, however in exercise of powers under Section 263 of the Act directed the Income-Tax Officer to modify the assessment made by him for the assessment year 1977-78 by withdrawing the deduction of Rs.29,17,912/- which was allowed under Section 80 T of the Act. According to the Revisional Authority, the order passed by the Income Tax Officer was erroneous and prejudicial to the Revenue. In his opinion, deduction granted by ITO was not allowable in the light of carried forward unabsorbed depreciation and development rebate reducing the income to nil.

3. Being aggrieved by the order of Commissioner, the assessee approached the Appellate Tribunal. The Tribunal also confirmed the order passed by the Commissioner and dismissed the appeal inter alia relying upon a decision of this court in CIT, Gujarat Vs. Amul Transmission Laying Hardware Ltd; 104 ITR 771. At the time of hearing, our attention was invited to Amul Transmission Laying Hardware Ltd as also a decision of the Hon'ble Supreme court in Commissioner of Income Tax Vs. Kotagiri Industrial Co-operative Tea Factory Ltd; 224 ITR 604.

4. Almost in similar circumstances, the Supreme Court held that before considering the matter of deduction under Section 80 B (5), the Income Tax Officer rightly set off the credit loss of earlier years in accordance with Section 42 of the Act and finding that the same exceeded, the ITO did not allow the deduction under Section 80 P of the Act. The principles laid down by the Supreme Court in Kotagiri Industrial Co-operative Tea Factory Ltd will apply to the facts of the present case.

5. We, therefore, see no reason to uphold the contention on behalf of the assessee. Accordingly, the reference is answered in the affirmative i.e. in favour of the Revenue and against the Assessee. No order as to costs.

(C.K.Thakker, J)

(M.C.Patel, J)

